

CANADA / JUDGMENT

Wilson v. Gaukel

2024 BCSC 2641

COURT

Supreme Court of British Columbia

DECIDED

6 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2641 Wilson v. Gaukel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wilson v. Gaukel,

2024 BCSC 2641

Date: 20241206

Docket: S242142

Registry: Vancouver

Between:

Robert Grant Wilson, Bridal Veil Mountain Resort Ltd.,

1194981 B.C. Ltd. and 1293448 B.C. Ltd.

Plaintiffs

And

Norman William Gaukel, also known as Norm Gaukel,

and Eugenio Pugliese

Defendants

Before: The Honourable Justice Elwood

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiffs:

A.L. Doolittle

J. Czypinski

The Defendant Norman William Gaukel, appearing in person:

N.W. Gaukel

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

December 5-6, 2024

Place and Date of Judgment:

Vancouver, B.C.

December 6, 2024

- [1] THE COURT: The plaintiffs apply for an order that the defendant, Norman William Gaukel, be found in contempt of court for contravening an order of Justice Milman made on April 4, 2024 (the "Milman order"), and an order of Justice MacNaughton made on September 9, 2024 (the "MacNaughton order"). The plaintiffs seek an order that Mr. Gaukel be committed to prison for a period of 30 or more days.
- [2] In addition, the plaintiffs apply in Chilliwack proceedings S40565 and S40566 for orders that the notices of civil claim in those two files be struck out, and that the registry files be sealed. I have made an order that those applications may be heard in Vancouver and joined with the current contempt application.

Facts

- [3] I will recite only the facts necessary for these applications.
- [4] The plaintiffs are developing a ski resort near Chilliwack, British Columbia. The project has not yet achieved regulatory approval. It is currently, as I understand it, going into to a period of public consultations.
- [5] Mr. Gaukel, one of two defendants in this action, is a former shareholder of the plaintiff company. He was a shareholder until May 2021. On January 31, 2022, Mr. Gaukel signed a non-disclosure agreement covering confidential information relating to the companies and the project.
- [6] I will acknowledge at the outset that Mr. Gaukel alleges that the non-disclosure agreement is illegal, and that he was induced by fraud to give up his shares. The merits of his allegations are not before me.

- [7] On April 4, 2024, the plaintiffs obtained a without-notice injunction by Milman J. enjoining the defendants from disclosing confidential information with respect to the project. The Milman order required the defendants to provide any pleadings which may contain confidential information to the plaintiffs' counsel in advance of filing to allow the plaintiffs to consider an application for a sealing order. The Milman order also allowed Mr. Gaukel to apply to vary the terms of the order. He has not done that.
- [8] On July 12, 2024, Mr. Gaukel attended at the offices of plaintiffs' counsel with a package of materials which the plaintiffs say contained confidential information and a letter threatening to disclose the confidential information to various stakeholders if the plaintiffs did not agree to his proposed resolution.
- [9] On or about July 22, 2024, Mr. Gaukel communicated confidential information within the meaning of the Milman order to: representatives of the Pace Group, a project media company; Michael Watson, a project indigenous consultant; Brent Harley, a project consultant; and Alim Tahani, the former partner of a current stakeholder.
- [10] Following these disclosures by Mr. Gaukel, the plaintiffs brought an application for him to be held in contempt of court for violating the Milman order.
- [11] The application came on before MacNaughton J. (then a judge of this Court) on September 9, 2024. There was, I am told, dialogue between the Court and counsel and Mr. Gaukel. Since Mr. Gaukel was unable to pay a monetary fine, MacNaughton J. proposed that he consent to a declaration of contempt against him in exchange for not paying a fine.
- [12] The parties, including Mr. Gaukel, accepted MacNaughton J.'s proposal and by consent entered into an order which Mr. Gaukel signed confirming his consent. The MacNaughton order provided that:
1. Norman Gaukel is held in contempt of court for contravening the April 4, 2024, Order of Justice Milman ;
 2. Norman Gaukel is, within seven (7) days of this order, to provide a detailed list of all persons and entities to whom he sent any Confidential Information, as defined in the Order from the date the Order was issued; and
 3. Norman Gaukel undertakes not to further disseminate any Confidential Information as defined in the Order.
- [13] Sometime after the appearance before MacNaughton J., Mr. Gaukel participated in a Zoom call with plaintiffs' counsel. During that Zoom call, he held up a copy of what he says was an unfiled copy of a notice of civil claim.

- [14] On November 6, 2024, Mr. Gaukel filed a notice of civil claim naming Brent Harley and what I understand to be Mr. Harley's company as defendants. He did not provide a copy of the notice of civil claim to plaintiffs' counsel by email prior to filing as required by the Milman order.
- [15] On November 12, 2024, Mr. Gaukel filed a notice of civil claim against Michael Lalonde and some of the current plaintiffs. This notice of civil claim attached as an appendix an extract from a confidential mediation brief which contained confidential information in breach of the Milman order. Mr. Gaukel did not provide a copy of the notice of civil claim to plaintiffs' counsel by email prior to filing as required by the Milman order.
- [16] Sometime after filing the notices of civil claim, Mr. Gaukel provided copies to his brother, the co-defendant in this proceeding, and a media outlet called the Chilliwack Progress.
- [17] Mr. Gaukel acknowledges that he gave the notice of civil claim to the Chilliwack Progress for the purpose of having them publish it, but, as far as he is aware, they have not published it.
- [18] On or about November 8, 2024, Mr. Gaukel submitted an expression of interest ("EOI") to the relevant government department concerning his own proposal for a ski resort. He prepared the EOI with assistance from a firm called Encon. He provided information to Encon that perhaps encouraged them to provide their services to him free of charge.
- [19] Mr. Gaukel says he did not rely on confidential information for his EOI, although he acknowledges that it likely contains some overlap with the plaintiffs' EOI, and therefore may contain confidential information.
- [20] Mr. Gaukel also delivered a package of materials to the office of the Attorney General. This package was the same or similar to the binder he provided to plaintiffs' counsel, which Mr. Gaukel acknowledged in the proceedings before MacNaughton J. was a breach of the Milman order.
- [21] Mr. Wilson, a principal of the plaintiffs in this action, deposes that the project is at a sensitive stage of the approval process. The provincial mountain resort branch is entering into a public engagement period that will include a 30-day public comment period. The branch is working with the Province's citizen engagement team to conduct a survey of the public, and they will be working with the plaintiffs to develop questions and communication materials.
- [22] The public engagement period is scheduled to begin on January 15, 2025, and continue until February 19, 2025. The public engagement process will involve several public meetings whereby members of the public may attend and engage with representatives of the project to ask questions, gather information, and express their opinions.
- [23] The plaintiffs are, understandably given the history of this matter, concerned that Mr. Gaukel will attend or encourage others to attend the public meetings and further disclose confidential information in the public consultation process.

Application to Strike Out the Notices of Civil Claim

- [24] I will deal first with the application to strike out the notices of civil claim that Mr. Gaukel filed in the Chilliwack registries. The plaintiffs apply under R. 9-5(1)(d) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, which provides the court with authority to strike a pleading which is an abuse of the process.
- [25] The Milman order required Mr. Gaukel to provide notice to the plaintiffs prior to filing a notice of civil claim in respect of the project or the companies. The Milman order set out how the notice was to be provided to the plaintiffs and to whom, a specific lawyer acting for the plaintiffs.
- [26] Mr. Gaukel was and remains able to access the courts to seek redress against the plaintiffs for losses that he alleges were caused by the plaintiffs' wrongdoing, so long as he complies with the Milman order.
- [27] A proceeding filed in breach of the Milman order is an abuse of the process of this Court. I do not accept Mr. Gaukel's argument that he gave notice to the plaintiffs by holding up a copy of the notice of civil claim during the Zoom call.
- [28] The Court must distance itself from Mr. Gaukel's deliberate breach of the Milman order. The claims in the Chilliwack Registry will be struck out as an abuse of process, and the existing court files will be sealed.

Application for an Order for Contempt

- [29] I turn to the plaintiffs' application for a finding and order of contempt. The plaintiffs apply pursuant to R. 22-8 of the Supreme Court Civil Rules and the inherent jurisdiction of the court to punish for contempt of its orders.

Rule 22-8 -- Contempt of Court

Power of court to punish

- (1) The power of the court to punish contempt of court must be exercised by an order of committal or by an imposition of a fine or both.

Security

- (3) Instead of or in addition to making an order of committal or imposing a fine, the court may order a person give security for the person's good behaviour.

Suspension of punishment

- (15) The court at any time may direct that the punishment for contempt be suspended for the period or on the terms or conditions the court may specify.

- [30] Civil contempt has three elements which must be established by the applicant beyond a reasonable doubt:
- a. The order alleged to have been breached must state clearly and unequivocally what should and should not be done;
 - b. The party alleged to have breached the order must have had actual knowledge of it; and
 - c. The party allegedly in breach of the court order must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

Carey v. Laiken, 2015 SCC 17, paras. 31-35 and 38.

Clarity of the Order

- [31] The orders in this case are clear, certain, and unambiguous. What is at issue before me is specifically paras. 2-3 of the Milman order and para. 2 of the MacNaughton order. Those terms are clear as to what Mr. Gaukel could and could not do.

Knowledge of the Contemnor

- [32] Mr. Gaukel consented to the MacNaughton order and gave an undertaking to the Court that he would not further disseminate confidential information. During the proceedings before MacNaughton J., Mr. Gaukel acknowledged his awareness of the terms of the Milman order. He further acknowledged his awareness of those terms in evidence that he gave under oath before me.

Breach of the Orders

- [33] Mr. Gaukel breached both orders by disclosing "confidential information" within the meaning of the Milman order to third parties, and by initiating proceedings in contravention of the clear terms of the Milman order as discussed above.
- [34] In addition, Mr. Gaukel has failed to deliver the list of persons or entities to whom he has sent any confidential information as required by para. 2 of the MacNaughton order.
- [35] I find that the plaintiffs have proven beyond a reasonable doubt the three elements of civil contempt.

Penalty

- [36] The plaintiffs seek an order that Mr. Gaukel be incarcerated for 30 or more days. The principles governing imposition of a penalty for civil contempt are well established. They are:

[80]

1. The gravity of the offence;

2. The need to deter the offender;
- 3 The past record and character of the offender and, in particular, whether this is a first offence;
4. The need to protect the public from the offender's misconduct;
5. The extent to which the offender is able to pay a monetary penalty; and
6. The extent to which the breach was flagrant and wilful and intended to defy the court's authority.

Law Society of British Columbia v. Bryfogle, 2012 BCSC 59, at para. 80.

Other cases have referred also to the ability to purge the contempt. See, for example, Carey, *supra*.

Gravity of the Offence

- [37] The primary contravention of the court orders currently before me is commencing two actions with public filings in breach of a court order to provide plaintiffs' counsel with advanced notice by email.
- [38] Second, Mr. Gaukel distributed copies of the notice of civil claim to third parties, including a local news outlet. Although there is no evidence that the news outlet has published the allegations in the notice of civil claim, as far as I am aware the document remains in their possession.
- [39] These were clear breaches of a court order, which must be taken seriously. However, I note that they are not breaches that endangered public health or public safety. Moreover, members of the media understand that allegations in court filings are just that: allegations that have not been proven in a court of law.
- [40] I acknowledge that the pleadings Mr. Gaukel distributed included confidential information within the broad definition of the Milman order. However, on my reading at least, the pleadings do not contain anything that is clearly proprietary information or what I would call trade secrets.
- [41] Third, Mr. Gaukel provided a package of information to the Attorney General's office, which included information he knew to be confidential information in breach of the Milman order. This is also a serious breach of a court order. However, I note that the Attorney General's office is staffed by lawyers who are trained in handling allegations of this nature.
- [42] Fourth, Mr. Gaukel submitted an EOI and provided information to the firm Encon for the purposes of preparing the EOI. The content of these disclosures is unclear to me, but it is reasonable to infer that they included some confidential information.

[43] These actions are understandably of concern to the plaintiffs because without compliance from Mr. Gaukel, or at a minimum the list that MacNaughton J. ordered him to produce, the plaintiffs are not able to determine the extent of the disclosure and contain any resulting damage. Without full compliance by Mr. Gaukel, there is a risk of serious damage to the plaintiffs and other investors in the project.

Character of the Offender

[44] Mr. Gaukel is a repeat offender in the sense that these contraventions occurred after he was brought before the court to answer for previous contraventions of the Milman order, and gave his undertaking to MacNaughton J. that there would be no further breaches.

Ability to Pay a Monetary Penalty

[45] Mr. Gaukel has testified that he has no money to pay any monetary penalty of any amount. He has no income. He is on a pension of \$1,100 per month, and he has no assets.

Nature of the Breach

[46] The breaches by Mr. Gaukel were deliberate and flagrant. However, I would not say that they have the added element of public defiance of the court's authority. Although Mr. Gaukel was very animated in these proceedings in court, he was not openly hostile or defiant, and he accepted direction from this Court.

Ability to Purge the Contempt

[47] There is some ability to purge the contempt. The claims in the Chilliwack Registry have been struck out. The registry files are being sealed. Mr. Gaukel can provide the list of names that MacNaughton J. ordered some time ago.

[48] However, Mr. Gaukel cannot undue the disclosures he has made to date, and to that extent, he cannot fully purge his contempt.

[49] More broadly, Mr. Gaukel has given evidence of what he describes as "trauma" that he has experienced, he alleges, as a result of the plaintiffs' wrongdoing. Mr. Gaukel says he will continue to "fight" the plaintiffs for return of his shares and other assets. He also says that he will continue to take steps, in his words, to "protect the stakeholders and the public" from what he considers to be a fraudulent project.

[50] Mr. Gaukel is entitled to have his day in court and to have his claims determined in accordance with the law. What he is not entitled to do is to disregard the court orders.

Conclusion

[51] I turn, therefore, to the appropriate penalty in this case. At the outset, I say that I agree with the following statement by Justice Davies in *Law Society of B.C. v. Dempsey*, 2007 BCSC 442, at para. 24:

[24] The Court does not wish to incarcerate individuals for breaches of its orders. The power to punish for contempt is a power which must be used most sparingly. Every opportunity must be given in appropriate circumstances for individuals who are found in contempt of court to purge that contempt. Penalties short of incarceration must always be considered.

[52] Merely providing Mr. Gaukel with an opportunity to purge his contempt will not be enough to deter further breaches of the court's orders. Moreover, Mr. Gaukel has no assets with which he could provide security for his good behaviour going forward.

[53] I have reviewed the authorities cited by plaintiffs' counsel and considered how they apply to the factors relevant to the penalty for civil contempt. These are obviously very fact-driven cases.

[54] The basic principles of sentencing require me to impose the least-restrictive sentence that will accomplish the objectives of the case law. In this case, the objective is to ensure that Mr. Gaukel complies with his existing obligations under court orders and continues to comply with those obligations going forward.

[55] I find that the appropriate penalty in this case is a term of imprisonment of 60 days, but that the sentence shall be suspended for a period of one year on the following conditions. Mr. Gaukel:

- You must destroy all copies of notice of civil claim that you filed in the Chilliwack Registry and not distribute those any further.
- You must fully comply with orders of Milman J. and MacNaughton J.
- You may commence proceedings in the court, but you must do so in accordance with para. 3 of the Milman order and any directions of the court concerning documents and the evidence in those proceedings.
- You must within seven days of today's order provide a detailed list of all the persons or entities to whom you have sent any "confidential information" as defined in the Milman order, from the date that order was issued.
- You must within seven days provide plaintiffs' counsel with a copy of the EOI or EOIs that you submitted in August and November of 2024.
- You must within seven days provide plaintiffs' counsel with a copy of the information that you provided to the Attorney General.

- [56] If Mr. Gaukel breaches any of the conditions of this order within the one-year period of suspension, the plaintiffs may apply for an order that he serve the 60-day sentence of incarceration. The plaintiffs may also apply to vary this order based on new information obtained subsequent to today's date.
- [57] The parties are to report to me on the compliance with this order on a date to be agreed following February 3, 2025.
- [58] I am not seized of further applications in this matter. However, if the parties believe it would be of assistance, they may request to appear before me.
- [59] I award the plaintiffs special costs of this these applications, which I will summarily assess at \$1,000.
- [60] I will now sign the vetted orders for the Chilliwack proceedings striking the notices of civil claim.
- [61] And while counsel finds those draft orders, do either of you have any questions about the order in this proceeding?
- [62] CNSL A. DOOLITTLE: No, justice. There was just one extra bit of housekeeping, which is the application that you gave us leave in this proceeding to just seal those two exhibits of the affidavits.
- [63] THE COURT: Yes, I will grant the order sealing the affidavit that contained the copies of the notices of civil claim.

"Elwood J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/26/2024BCSC2641.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/wilson-v-gaukel-2024>

Prepared on 26 October 2026 · Esheria